



Imelda Richardson
Chief Inspector
Care and Social Services Inspectorate Wales
Cathays Park
Cardiff
CF10 3NQ

Cambrian Buildings
Mount Stuart Square
Cardiff CF10 5FL

Adeiladau Cambrian
Sqwâr Mount Stuart
Caerdydd CF10 5FL

10 August 2015

Dear Imelda,

Care Home Review: Analysis of your final response

I am writing to thank you for providing a final response to my Requirements for Action, which I have now had an opportunity to analyse¹.

In analysing the response received, I was looking for assurance, through the information provided, that my Requirements for Action will be implemented and the intended outcomes will be delivered for older people.

On the basis of the evidence provided to me, there are three areas that require further work to assure me that the required change and improvement will be delivered for older people and I am not satisfied that your organisation will comply with one of my Requirements for Action.

Please find attached a detailed analysis of the additional information you have provided in response to my request.

¹ As you are aware, I am obliged by the Commissioner for Older People (Wales) Act 2006 to keep a register of responses to my Requirements for Action and therefore all of the responses from the bodies subject to my Review will be published on my website together with the analysis of each response.

As I have already advised, I will be publishing an overall commentary on whether I consider that the change I expect to see on behalf of older people will be delivered across Wales and I intend to make a formal public statement in respect of this and action intended by individual bodies subject to the Review. These statements will be made on 11 August 2015. On this date, I will make public my intention to undertake a follow-up Review in 18 months' time. At this stage I will be looking for tangible evidence that the outcomes I expect to see have been consistently delivered across the care home sector. I will, at a later stage, provide you with information on the scope and approach that I will adopt.

As I have not received a high enough level of assurance from you, there are a number areas for which I would welcome further information and assurance. This will help inform my 'One Year On' statement that I will be making in November.

If it would be helpful for you to meet to discuss my attached analysis of your response, then please contact me.

Yours sincerely

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Sarah Rochira
Older People's Commissioner for Wales

Care and Social Services Inspectorate Wales

The Care and Social Services Inspectorate Wales welcomes the perspective and additional insight that the Older People Commissioner's review on the quality of life and care of older people in care homes in Wales has bought and wish to respond positively to the actions identified for CSSIW.

Requirement for Action 1.5

Final Conclusion - Partial

1.5 An explicit list of 'never events' should be developed and published that clearly outlines practice that must stop immediately. The list should include use of language, personal care and hygiene, and breaches of human rights.

There are a number of positive commitments and actions that CSSIW has made in response to this Requirement for Action. I welcome these commitments and actions, and in turn, their potential to inform publically accessible information on 'never events' that will clearly outline unacceptable care practices, and provide a consistent baseline for CSSIW's inspection regime.

For example, CSSIW will publish revised inspection guidance in autumn 2015 that will include thresholds for non-compliance in relation to unacceptable care practices, which plans to incorporate learning from the Flynn review. A Quality Judgement Framework is also being developed, which will enable inspectors to rate homes through judgements about whether the quality of care, leadership, wellbeing and environments in a care home is Excellent, Good, Adequate or Poor. It is also welcome that CSSIW will be consulting more widely with older people living in care homes, their families and representatives on the development of CSSIW's Quality Judgement Framework.

However, I am disappointed that despite asking for further assurances about the vital role of professional judgement in responding to potential

never events, this position has not yet been clarified. CSSIW have stated that they will be developing guidance for inspectors to assist them in making a professional judgement as to the quality of service (as part of the Quality Judgement Framework), and that the findings laid out in my report will be utilised. While I welcome this, I still have concerns about how inspectors will, and are, currently guided to make professional judgements when ‘assessing the risks to service users, and the capability of the provider to make improvements’.

I raised a concern in relation to CSSIW’s initial response to this Requirement for Action that it appeared that wider ownership of this Requirement for Action was not as robust as I had expected. I am therefore pleased that CSSIW has directly responded to this concern, through recognising how providing information about the quality of services, [which must include unacceptable care]² to people using services, their carers, and families, is a tool of empowerment. However, I am disappointed that there is no commitment to publish an explicit list of never events that the public and other professionals could use to report incidents, within homes, to commissioners and directly to CSSIW that would improve their intelligence and upon which further action could be taken. This undermines the clarity that there needs to be across the wider sector and the public domain about that which should never be tolerated and should always be acted upon.

This would complement CSSIW’s investment in the use of social media and increased online engagement with the public, which is designed to encourage more people to raise issues with them directly. Whilst I welcome such an increase in direct engagement with the public, and recognise the opportunities this could present to swiftly identify and address poor and unacceptable care, its impact will be undermined without a clear and explicit understanding across professions of what constitutes the extremes of unacceptable care.

While CSSIW have shown clear intent and leadership in their commitment to develop and publish a list of never events within the Quality Judgement Framework and revised inspection guidance, it appears that these would only be accessible to and able to be used by CSSIW inspectors and not

² Insertion from OPCW

other professionals or the public. In addition to this the issue of public reporting on never events has not been explicitly explored.

In my supplementary notice, I asked for an explicit reference about how CSSIW inspectors balance their assessment of risks against their legal duty to respect and protect older people's rights under the Human Rights Act. I am disappointed that CSSIW's final response provides insufficient assurances in relation to how inspectors ensure that the human rights of older people are upheld when exercising their professional judgement.

I will take a close interest in the development of explicit never events and the way that they're used as a tool to identify and eradicate the extremes of unacceptable care.

Requirement for Action 6.2

Final Conclusion - Partial

6.2 Care home providers, commissioners and CSSIW should develop informal and systematic ways in which to ensure they better understand the quality of life of older people through listening to them directly (outside of formal complaints) and ensuring issues they raise are acted upon

Annual reporting should be undertaken of how ongoing feedback from older people has been used to drive continuous improvement (see Action 6.10).

There are positive commitments and a clear progression in the development of actions that CSSIW has made in response to this Requirement for Action. For example, increased engagement and consultation with providers has taken place and has led to a reappraisal of the inspection process, and there is strong enthusiasm for the coproduction of the Quality Judgement Framework with the care sector.

CSSIW have provided assurances that phase 2 of the consultation process for the reappraisal of its inspection process will involve wider engagement with older people living in care homes, their families and representative organisations. However, I remain concerned that there appears to be an inequitable approach towards involving and listening to residents and family members, and using their views.

I will be taking a close interest in the development of the revised inspection process and quality judgement framework to ensure that it is focussed upon quality of life, and care for older people in care homes as I explicitly laid out in my Review.

I welcome that CSSIW have provided assurances that the proposals to change the theme within the new inspection framework from 'quality of life' to 'supporting wellbeing' will not dissipate CSSIW's growing focus on the lived experience of individual's quality of life. I am a strong advocate for linking the new Quality Judgement Framework to the 'national outcomes framework for people who need care and support and carers who need support', published by Welsh Government.

Notwithstanding the above, I'm not yet sufficiently assured that action in hand will lead to a position whereby care home providers, commissioners and CSSIW truly understand an individual's lived day to day experience in a care home, which is wholly dependent on an individual's quality of life, and these bodies will be able to act on this understanding to drive improvement and prevent poor care.

I recognise that the establishment of the National Advisory Board and regional advisory panels will enhance CSSIW's understanding of older people's quality of life and care in care homes, at a macro level, and I am pleased to contribute to this forum. However, I am concerned that this will not in itself support a sufficient understanding at an individual level, and as a result, might not enable CSSIW to deliver on its proposed aim 'to put the experiences of people using services at the heart of our work'.

If this is to be achieved, then meaningful engagement with residents in care homes needs to extend beyond specifically appointed individuals, at a macro level, responding to a formalised agenda, as their perspectives and experiences are not necessarily representative of the lived experience of the majority of residents in care homes, and family

members in Wales, nor of the individual experience of older people in specific care homes. It is for this reason that I am a strong supporter of lay assessors being part of the revised inspection process.

While CSSIW have strengthened their response to incoming concerns through the use of online media (the majority of which relate to older people) , they do not state how they will systematically ensure that concerns raised are effectively remedied and used to inform wider strategic understanding of quality of life and care.

This reflects a wider level of clarity about how, or if, ongoing feedback from older people, from a range of sources, is currently collected and, if so how this is used to drive improvements. CSSIW did not provide sufficiently detailed information about how ongoing feedback from older people would be used to drive continuous improvement and reported on in line with my Requirement for Action; other than references to the Regulation and Inspection of Social Care (Wales) Bill and new IT systems.

I note that CSSIW recognises the opportunity to develop annual reporting in line with the Regulation and Inspection of Social Care (Wales) Bill. I would expect this to include annual commentary on how effective providers are at listening to, and acting on what they hear from older people in order to drive continuous improvement.

Requirement for Action 6.3

Final Conclusion – Unacceptable

6.3 Lay assessors are used on an ongoing basis, as a formal and significant part of the inspection process
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I welcome CSSIW's commitment to look at ways of utilising Community Health Council experience within their overall approach to determining the quality of life and care of older people in care homes. I also welcome CSSIW's commitment to involve older people in its national and thematic inspections and reviews when this is appropriate.

While CSSIW has developed some alternatives to lay assessors, more detail is needed to provide the assurances that I seek in relation to how the external challenge and perspectives that are brought by lay assessors visiting care homes is equitable to local participation boards and thematic reviews, in ensuring that the lived experiences of older people in care homes, and their rights are upheld.

The consultative and thematic approaches that CSSIW have established are not equal to the difference that lay assessors could make to an ongoing, formal and significant part of the inspection process through understanding the quality of life and care for older people in care homes through the eyes of a lay person. Having read the financial assessment for the Regulation and Inspection of Social Care (Wales) Bill, I do not agree that the cost of lay assessors is too high and would expect CSSIW to be able to highlight the benefits of lay assessors, as a means to external perception, and to be making a strong case to Welsh Government for resourcing them. I recognise and welcome the National Assembly for Wales Health and Social Care Committee Stage 1 report into the Regulation and Inspection of Social Care (Wales) Bill³ which recommends that there be a requirement placed on the face of the Bill for CSSIW to include the use of lay inspectors as an integral part of its approach to regulation and inspection.

I would expect, given the vulnerability and increasing acuity levels of older people in care homes, and the presence of lay assessors within Health Inspectorate Wales 'who ensure that (our) inspections are firmly rooted in the experience of care by patients, and the public's expectations'⁴, for the same approach to be present across all inspectorates. Furthermore, there are additional protective mechanisms in place across children's services, such as the statutory obligation upon Local Authorities to provide independent professional advocacy for looked after children, and the statutory role of independent visitors for particularly isolated children in care that are simply not present for older people.

³ National Assembly for Wales, Health and Social Care Committee, Regulation and Inspection of Social Care (Wales) Bill, Stage 1 Committee Report, 2015

⁴ [Health Inspectorate Wales, 'Our response to the 'In Search of Accountability' report published today, 14th July 2015](#)

It is the combination of lay assessors, an increased personalised approach to care, together with the proposed new inspection framework that has the potential to create a powerful tool that should be fully considered, and in the public's mind would be consistent with other settings in which vulnerable people find themselves.

Requirement for Action 6.9

Final Conclusion – Partial

6.9 The Chief Inspector of Social Services publishes, as part of her Annual Report, information about the quality of life and care of older people in care homes which includes the following:

- The quality of life of older people in care homes who are bed bound
- The quality of life of older people in care homes living with dementia
- The quality of life of older people in care homes living with sensory loss
- The implementation of care plans in older people's care homes
- The accuracy of external statements from independent providers
- How the human rights of older people are upheld in care homes across Wales

I welcome that CSSIW has committed to consider how the Chief Inspector's Annual Report can be expanded to include specific commentary on the areas that I have highlighted. The response provides a brief description of how data could be collected and describes the joint work that is underway with organisations such as Sense Cymru.

Notwithstanding the commitments for action that are in hand in respect of the other areas listed in this Requirement for Action, I remain concerned that the response continues to fall short of fully committing to reporting on how the human rights of older people are upheld in care homes across Wales.

I acknowledge that CSSIW recognises that respecting human rights sits at the heart of good care, and that in time, the Quality Judgement

Framework will comment on the behaviours and practices required by providers, and it is clear that CSSIW have processes in place to fulfil their responsibilities and report on some aspects of human rights through the 'Deprivation of Liberty Safeguards'.

While I recognise your challenge of reporting on the human rights of older people, human rights sit at the heart of quality of life and care, a statement that is recognised by CSSIW itself.

The presence of the UN Principles for Older Persons on the face of the Social Services and Well Being (Wales) Act 2014 makes it even more essential for the Quality Judgement Framework, and the Chief Inspectors Annual Report to reflect on how care provided in care homes upholds the human rights of older people. Furthermore, human rights provision within the Care Act 2014 place human rights responsibilities on to all providers when they are exercising a 'function of a public nature'.

I recognise and welcome the National Assembly for Wales Health and Social Care Committee Stage 1 report into the Regulation and Inspection of Social Care (Wales) Bill⁵ which calls for the inspectors annual report to include reference to the impact of the UN Principles for Older Persons, and for the Bill to have 'due regard' to the UN Principles.

I would wish to see CSSIW show strong leadership in the development of a rights based approach to inspection and regulation of the quality of life and care of older people in care homes. If transparency and openness is to be an effective lever for change, it is crucial that new reporting metrics within the Chief Inspectors Annual Report focus on the qualitative information in addition to quantitative. Therefore, a lack of narrative in the Annual Report on how the human rights of older people have been respected and upheld would present a missed opportunity in this regard.

⁵ National Assembly for Wales, Health and Social Care Committee, Regulation and Inspection of Social Care (Wales) Bill, Stage 1 Committee Report, 2015